IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1874 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANTABEN WD/O PATEL TRIBHOVANBHAI NARSIDAS

Appearance:

1. First Appeal No. 1874 of 1985
MR HARDIK C RAWAL for Petitioner No. 1
MR JM BAROT for Respondent No. 1-4
MR MEHUL SHARAD SHAH for Respondent No. 1-3
DELETED for Respondent No. 5

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 02/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The appellant-Corporation has challenged in this appeal the impugned judgment and award dated 12.3.1985 passed by the M.A.C. Tribunal (Main) Mehsana in M.C.A.P. No.413/82 filed by the respondents-claimants awarding Rs.1,01,000/= against the claim of Rs.1,40,000/= with interest @6% p.a. from the date of application till realisation with proportionate cost. Rest of the claim was dismissed.

#. Learned counsel for the appellant firstly submitted that the learned Tribunal committed grave error in holding that the driver of the bus was solely rash and negligent in driving the bus and causing fatal accident wherein deceased-Tribhovan died. It was submitted by the learned counsel for the appellant that at least 20% negligence should have been attributed to the driver of the tractor. The accident in question is not in dispute. The tractor was going ahead at the time of accident, which took place at about 5.00 p.m. i.e. in broad day light. At that time driver of bus coming from behind dashed with the tractor because of that tractor turned turtle and deceased-Tribhovan, who was driver of the tractor died then and there. It was found by the learned Tribunal in its award that the tractor was proceeding on the correct side. In that view of the matter, the learned Tribunal was absolutely right in holding that in such type of cases though there is no eye witness, principle of res-ipsa-loquitur would apply. Considering this the learned Tribunal has rightly held the driver of the bus solely negligent for the accident. Such finding of fact would not be disturbed by this court. Hence, first submission made by the learned counsel for the appellant is rejected.

#. It was then contended by the learned counsel for the appellant that the learned Judge committed grave error in considering loss of income @Rs.1,000/= p.m. which would come to Rs.12,000/= p.a. Out of that amount of Rs.12,000/=, learned Tribunal deducted Rs.4,000/= for the personal use of deceased-Tribhovan. Thus, according to the learned Tribunal there was loss of income of Rs.8,000/= p.a. and considering the age of the deceased-Tribhovan, who was 45 at the time of accident, applying multiplier of 12, awarded in all Rs.96,000/=. In addition to that the learned Tribunal awarded Rs.5,000/= on account of loss to the estate and

expectation of life. Thus, the learned Tribunal awarded Rs.1,01,000/=. However, it was submitted by learned counsel for the appellant that the land remains the same, therefore, the learned Tribunal ought not to have awarded Rs.8,000/= p.a. on the head of future economic loss. It is true that land in question remains with the claimants, who are widow and minor children of deceased-Tribhovan. But the fact remains that the respondent-widow claimant had to look after her three minor children, it would not be possible for her to cultivate the land. In that view of the matter, when the learned Judge has taken very conservative figure of Rs.8,000/= p.a. applying multiplier of only 12 considering the age of the deceased i.e. 45 at the time of accident awarded Rs.96,000/= on the head of future loss of income, then we would not like to interfere with the same in this appeal. In fact, according to us, the award is slightly on lower side. However, in absence of any cross-objection being filed by respondents-claimants, we would not like to interfere with the impugned award passed by the learned Tribunal. Accordingly, this appeal fails and is hereby dismissed with costs.

The amount which is lying deposited with the Tribunal be now handed over to the respondents-claimants by the learned Tribunal by way of account payee cheque as per the proportionate fixed by the learned Tribunal in its award.

(B.J.Shethna, J.)

(Kundan Singh, J.)

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